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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY,)	CIVIL NO. CV07-00172 SOM LEK
	)	(Copyright)
Plaintiff,)	
	)	DEFENDANTS' MEMORANDUM
v.	)	IN SUPPORT OF EVIDENTIARY
	)	OBJECTIONS TO THE
DEUTSCHE BANK TRUST	)	DECLARATION OF TIMOTHY J.
COMPANY AMERICAS (FKA	)	HOGAN; CERTIFICATE OF
BANKERS TRUST COMPANY)	)	SERVICE
AND JP MORGAN CHASE BANK)	
IN THEIR SEPARATE CAPACITIES))	
AND AS AGENTS FOR THE PRE	)	Date: July 23, 2007
AND POST- PETITION LENDERS	)	Time: 11:15 a.m.
OF FLEMING COMPANIES, INC.;	)	Place: Room C-409
DOES 1 TO 200,)	
)	
Defendants.)	
)	
)	

**DEFENDANTS' MEMORANDUM IN SUPPORT OF EVIDENTIARY
OBJECTIONS TO THE DECLARATION OF TIMOTHY J. HOGAN**

Defendants Deutsche Bank Trust Company Americas and JP Morgan Chase Bank (together, "Defendants") submit these evidentiary objections to the Declaration of Timothy Hogan.

Paragraph 1: Mr. Hogan's testimony regarding what Berry believes is inadmissible hearsay not subject to any exceptions. *See* FED. R. EVID. 802, 803.

Exhibit 2 (Transcript From Berry's Litigation With PCT): The statements contained in Exhibit 2 are hearsay, lack foundation and are speculative. *See Bliesner v. Commc'n Workers of Am.*, 464 F.3d 910, 915 (9th Cir. 2006) (holding that district court properly struck portions of an affidavit due to lack of personal knowledge); *see also* FED. R. EVID. 802, 803.

Exhibit 9 (PCT Motion): The motion (filed by a third party, the PCT) and its attached emails contain statements that lack foundation. *See Bliesner v. Commc'n Workers of Am.*, 464 F.3d 910, 915 (9th Cir. 2006) (holding that district court properly struck portions of an affidavit due to lack of personal knowledge). Further, the motion and attached emails were drafted by a third party and are hearsay not subject to any exceptions. *See* FED. R. EVID. 802, 803.

Defendants do not take issue with the Court judicially noticing the motion itself, but as it is not a court order, the content of the motion cannot be used for res judicata or collateral estoppel effect.

Exhibit 10 (March 19, 2003 Email): Exhibit 10 has not been properly authenticated and is inadmissible. *See Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 777 (9th Cir. 2002) (declarant who did not write the document cannot authenticate it). Moreover, the email lacks foundation and is speculative. *See Bliesner v. Commc'n Workers of Am.*, 464 F.3d at 915 (holding that district court properly struck portions of an affidavit due to lack of personal knowledge). Finally, an email drafted by an individual not party to this litigation is hearsay not subject to any exceptions. *See* FED. R. EVID. 802, 803.

Exhibit 14 (C&S Disclosure Schedule): Exhibit 14 is hearsay not subject to any exceptions. *See* FED. R. EVID. 802, 803. Defendants do not take issue with the Court judicially noticing the filed sale document, but as it is not a court order, the content of the document cannot be used for res judicata or collateral estoppel effect.

Exhibit 15 (C&S Webpage): Exhibit 15 is irrelevant. *See* FED. R. EVID. 401, 402. “‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” *Id.* Berry apparently relies on a webpage from the C&S website to argue that the lenders had a financial interest in keeping the Hawai’i division operating and, thus, a financial interest in the infringement. The website, apparently memorialized as of July 3, 2007, seems to be a list of C&S Wholesale Grocers locations (it is unclear whether the list is all inclusive). The page has no relevance to Defendants’ financial interest in the Hawai’i division or the alleged infringement at the time of the 2003 sale. As such, it is inadmissible in this lawsuit.

Even if the webpage was relevant to this lawsuit, information contained in the website lacks foundation. *See Bliesner v. Commc’n Workers of Am.*, 464 F.3d at 915. And the content is hearsay not subject to any exceptions. *See* FED. R. EVID. 802, 803.

Exhibit 16 (Transcript From Berry’s Litigation With PCT): Statements contained in Exhibit 16 lack foundation. *See Bliesner v. Commc’n Workers of Am.*, 464 F.3d at 915 (holding that district court properly struck portions of an affidavit due to lack of personal knowledge). Further, witness testimony by an individual not party to this litigation (a Fleming employee) in another trial is hearsay not subject to any exceptions. *See* FED. R. EVID. 802, 803.

DATED: Honolulu, Hawai'i,
July 12, 2007

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By: /s/ Lyle S. Hosoda

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